IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 3071/2005

HEERA BAI & ANR.
v
MOHD. RAFEEQ & OTHERS

Date of Judgment: 22nd FEBRUARY , 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Rohan Jain for the appellants.
Mr. J. P. Goyal for the respondents.

By Court:

The plaintiff-appellants are challenging the order dated 6.10.05 passed by the District Judge, Baran whereby the learned Judge has allowed the second temporary injunction application of respondent No.1 and 2.

The brief facts of the case are that the appellants had filed a civil suit for cancellation of sale-deed dated 4.3.05 against respondent Nos. 1 to 5. According to the plaint, a land measuring 1.92 hectares bearing Khasra No. 171 situated in Village Gopalpura, Tehsil & District Baran was in equal shares of appellant No. 1 and 2 and respondent No.3. Since no partition had taken place between the parties, each one of them had an equal share as a coparcener in the said land. After the death of the original land holder, Shri

Goverdhan, who happened to be the husband of appellant No.1 and father of respondent No.3 and grandfather of appellant No.2, mutation was opened in the name of respondent No.3 and in the name of the appellants. However, respondent No.3 used to consume 'Charas' and other narcotic substances. Allegedly, he lost his mental balance. In an unfit state of mind, the respondent No.3 sold the half share of the total agricultural land to respondent No.1 and 2 Mohd. Rafiq and Rais Ahmed, on 3.3.05. And a sale-deed was executed on 4.3.05. However, according to the appellant the said share could not be sold to the respondent No. 1 and 2 as the land belongs to the Joint Hindu Family where each and every coparcener has an equal share. Such a share could not be sold without the consent of the other members of the family. It was further alleged that on 4.4.05 the respondent No. 1 and 2 tried to forcefully overtake the possession of the said land. Therefore, the appellant filed the suit for cancellation of the sale-deed dated 4.3.05 and further prayed for permanent injunction against the respondent No. 1 and 2. Along with the said suit an application under Order 39, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (henceforth to be referred to as 'the Code', for short) was also filed.

The respondent No. 1 and 2 submitted their reply to the plaint as well as to the temporary injunction application. According to them, respondent no.3 is absolutely hale and hearty and in a fit

state of mind. In order to start a grossery store, the respondent No.3 has sold his share in a fit state of mind. Therefore, respondent No.1 and 2 claimed to be bonafide purchaser. They further alleged that appellant No.1 is trying to change the nature of the land from agricultural to residential. She has already constructed a plinth up to two feet of height upon 2000 Sq. Ft. of land on the southern side of the agricultural land. She is also trying to carve out residential plots in the land and to sell the same to other persons. Therefore, the respondent No.1, who claimed to be the bonafide purchaser prayed that temporary injunction application should be dismissed.

After hearing both the parties vide order dated 30.8.05, the learned Judge restrained respondent No.1 and 2 from not interfering with the peaceful possession of the appellants in the agricultural land till the disposal of the suit. Instead of filing an appeal against the said order, the respondents filed a second temporary injunction application only after five days i.e. on 5.9.05. In the application, the respondents prayed that the appellants be restrained from converting any portion of the agricultural land into non-agricultural use and be restrained from selling the land to a third party. After hearing both the parties, vide order dated 6.10.05 the learned Judge restrained the appellants from converting any portion of the agricultural land to non-agricultural use and from

selling or mortgaging or transferring the land to a third party. Since the appellants are aggrieved by the order dated 6.10.05, the present appeal before this Court.

Mr. Rohan Jain, learned counsel for the appellant has vehemently argued that the sudden 'U' turn made by the learned judge from the first order issued by him dated 13.8.05, whereby he had restrained the respondents and issued an injunction in favour of the appellant, to the second order dated 6.10.05 whereby he has issued an injunction in favour of the respondents and against the appellants, creates a doubt about the objectivity of the learned Judge. Secondly, that there was no change of circumstances between the first temporary injunction application and the second temporary injunction application. The only difference is that while the first temporary injunction application was filed by the appellant, the second temporary application has been filed by the respondent No. 1 and 2. Since there was no change in circumstances, there is no logical reason for the Judge to suddenly change his mind. Thirdly that both the orders dated 30.8.05 and the impugned order dated 6.10.05 are contradictory to each other and cannot be sustained simultaneously.

On the other hand, Mr. J.P. Goyal, learned counsel for the respondents has strenuously argued that the learned Judge has

passed a detailed speaking order justifying his subsequent grant of injunction in favour of the respondent No. 1 and 2. Therefore, the objectivity of the learned Judge is beyond doubt. Secondly, that since the dispute is over a property, it is better to preserve the nature of the property as it is, instead of permitting the appellants to change its very nature and to create third party rights. Thirdly, in case the nature of the property is not preserved the very subject matter of the dispute is likely to disappear. Fourthly, the creation of third party rights would lead to multiplicity of litigation. Fifthly, that immediately after the temporary injunction was granted in favour of the appellant, they started selling of the land to others and started constructing residential houses on the land. This fact was brought to the notice of the Court through photographs produced by respondent Nos. 1 and 2. Therefore, it was imperative to preserve the nature of the land and to prevent the appellants from raising further construction or from selling the land to a third party.

We have heard both the learned counsels and have perused the impugned order.

A bare perusal of the order dated 30.8.05 (Annex-3) clearly reveals that the learned Judge had noted that the land in dispute is an ancestral property of the family. So far no partition had taken place amongst family members after the death of the original

land holder, Goverdhan. The learned Judge had also noticed that despite the non-partition of the property, half of the land was soled by respondent No.3 to respondent No. 1 and 2. The learned Judge had also noticed the fact that allegedly respondent Nos. 1 and 2 were forcefully trying to take over the possession of the land. Considering the fact that the appellants were in possession of the land, considering the fact that the balance of convenience was in their favour, considering the fact that if respondent Nos. 1 and 2 were permitted to interfere with the peaceful possession of the appellants, an irreparable loss would be caused to the appellants. The learned Judge had rightly granted the temporary injunction in favour of the appellants and against the respondent Nos. 1 and 2.

However, the grant of such an stay order did not mean and should not have been construed by the appellants as a licence given by the Court to them for changing the nature of the agricultural land and for selling of the land to third parties. The intention of the learned Judge was to ensure that the property is preserved and that the appellants are permitted the peaceful possession of the property. But, it could not be the intention of the learned Judge that the appellants are permitted to convert the land from agricultural to a residential land or to create third party rights so as to give rise to endless litigation. When it was brought to the notice of the learned Judge that the order dated 30.8.05 was being

misused by the appellants, the learned Judge has rightly restrained the appellants from misusing the said order. In the case of Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass (AIR 2005 SC 104) the Hon'ble Supreme Court has clearly held that " unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings." It further held that " in cases of property disputes ordinarily the status-quo should be ordered to be maintained." By passing the impugned order the learned Judge is merely maintaining the status-quo of the property and is merely preventing the appellants from selling, alienating, transferring and from creating a third party rights. Since the judiciary is already over burdened by litigation, the Courts should prevent the mushrooming of litigation. The learned Judge has merely nipped the possibility of further litigation in the bud. Therefore, he has legally and validly passed the impugned order.

Hence, there is no merit in this appeal. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.